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6 **IN THE UNITED STATES DISTRICT COURT**  
7 **FOR THE DISTRICT OF ARIZONA**  
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9 Aluminum Trailer Company,

10 Plaintiff,

11 v.

12 Sidi Spaces LLC, et al.,

13 Defendants.  
14

No. CV-20-00140-PHX-DLR

**ORDER**

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16 Before the Court is Defendants' motion to certify order for interlocutory appeal,  
17 which is fully briefed. (Docs. 29, 33, 34.) For the following reasons, Plaintiff's motion is  
18 denied.

19 **I. Background**

20 On March 18, 2020, Defendants filed a motion to dismiss that argued, *inter alia*,  
21 that counts I through IV of Plaintiff's complaint, bringing causes of action for defamation  
22 and trade libel based on alleged pre-suit communications made by Defendants to third  
23 parties outside the anticipated litigation, are foreclosed by the *Noerr-Pennington* doctrine.  
24 (Doc. 9.) On July 17, 2020, the Court denied Defendants' motion, concluding that the  
25 *Noerr-Pennington* doctrine did not foreclose counts I through IV because the defamatory  
26 communications on which Plaintiff's defamation and trade libel claims were based did not  
27 constitute protected petitioning activity or activity sufficiently related to petitioning  
28 activity. (Doc. 23.) On October 8, 2020, Defendants moved to certify for interlocutory

1 appeal the following question: “Does the *Noerr-Pennington* doctrine bar the Plaintiff’s  
2 claims as alleged in the Complaint (Doc. 1)?”

### 3 **II. Legal Standard**

4 Federal appeal courts have jurisdiction over appeals from all final decisions of the  
5 district courts. 28 U.S.C. § 1291. However, an appellate court may also have jurisdiction  
6 to hear an appeal of an otherwise non-appealable district court order in rare circumstances  
7 in which such order involves (1) a controlling question of law as to which there is (2)  
8 substantial ground for difference of opinion and (3) an immediate appeal from the order  
9 may materially advance the ultimate termination of the litigation. 28 U.S.C. § 1292(b).  
10 Section 1292(b) “is a departure from the normal rule that only final judgments are  
11 appealable, and therefore must be construed narrowly.” *James v. Price Stern Sloan, Inc.*,  
12 283 F.3d 1064, 1098 n.6 (9th Cir. 2002). “[E]ven when all three statutory criteria are  
13 satisfied,” however, “district court judges have ‘unfettered discretion’ to deny  
14 certification.” *Villarreal v. Caremark LLC*, 85 F. Supp. 3d 1063, 1068 (D. Ariz. 2015)  
15 (quotation omitted).

### 16 **III. Discussion**

17 Certification for interlocutory appeal is inappropriate because the proposed  
18 question—whether the *Noerr-Pennington* doctrine “bar[s] the Plaintiff’s claims as alleged  
19 in the Complaint”—is not a pure question of law. *See C.M. v. U.S.*, No. CV-19-05217-  
20 PHX-SRB, 2020 WL 5232560, at \*2 (D. Ariz. July 6, 2020) (citation omitted) (“In addition  
21 to being ‘controlling,’ the issues must be ‘pure’ questions of law.”); *XTO Energy, Inc. v.*  
22 *ATD, LLC*, 189 F. Supp. 3d 1174, 1193 (D.N.M. 2016) (quotation omitted) (“The legal  
23 question must be stated at a high enough level of abstraction to lift the question out of the  
24 details of the evidence or facts of a particular case and give it general relevance to other  
25 cases in the same area of law.”); *Porter v. Mabius*, No. 1:07-CV-0825 AWI SMS, 2014 WL  
26 669778, at \*2 (E.D. Cal. Feb. 20, 2014) (citation omitted) (“The antithesis of a proper §  
27 1292(b) appeal is one that turns on [] whether the district court properly applied settled law  
28 to the facts.”). Looking to Defendants’ proposed question, it is apparent that this is not a

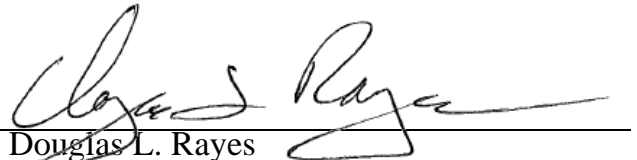
1 “matter the court of appeals ‘can decide quickly and cleanly without having to study the  
2 record.’” *C.M.*, 2020 WL 5232560, at \*2 (quotation omitted). Rather, the question requires  
3 the Ninth Circuit to study whether the facts forming the basis of Plaintiff’s defamation and  
4 trade libel claims constitute communications within the protection of the Petition Clause  
5 triggering the *Noerr-Pennington* doctrine.

6 Even if Defendants had sought to certify a pure question of law, certification is  
7 nevertheless inappropriate because, even assuming that the Ninth Circuit were to conclude  
8 on interlocutory appeal that the *Noerr-Pennington* doctrine does foreclose Plaintiff from  
9 pursuing counts I through IV, eleven counts would remain. *See Villareal*, 85 F. Supp. 3d  
10 at 1072 (Where “a substantial amount of litigation remains in the case regardless of the  
11 correctness of the Court’s ruling . . . arguments that interlocutory appeal would advance  
12 the resolution of the litigation are unpersuasive.”). The Court therefore concludes an  
13 interlocutory appeal is unlikely to materially advance the ultimate termination of this  
14 litigation. For these reasons,

15 **IT IS ORDERED** that Defendants’ motion to certify order for interlocutory appeal  
16 (Doc. 29) is **DENIED**.

17 **IT IS FURTHER ORDERED** that Defendants’ motion for stay and expedited  
18 ruling request (Doc. 30) is **DENIED AS MOOT**.

19 Dated this 2nd day of December, 2020.

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24 Douglas L. Rayes  
United States District Judge